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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ERNEST ADOLF SCHAEF, SR.,

12 Petitioner,

13 v.

14 DEPARTMENT OF CORRECTIONS,

15 Respondent.

16 Case No. C05-5461RBL

17 REPORT AND
18 RECOMMENDATION TO DENY
19 APPLICATION TO PROCEED
20 IN FORMA PAUPERIS

21 Noted for August 12, 2005

22 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
23 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Washington State Penitentiary. He has
24 filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in*
25 *forma pauperis*. (Dkt. #1). Because petitioner already appears to have sufficient funds with which to pay
26 the \$5.00 court filing fee, and because he already has paid that filing fee, the undersigned recommends the
27 court deny the application.

28 DISCUSSION

29 The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a
30 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in
31 denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),
32 *cert. denied*, 375 U.S. 845 (1963).

33 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a

1 prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586
 2 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*
 3 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),
 4 *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

5 By requesting the court to proceed *in forma pauperis*, petitioner is asking the government to incur
 6 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
 7 *habeas corpus*. The six-month prison trust account statement attached to petitioner's application indicates
 8 he has an average spendable balance of \$346.52.

9 Given the fact that a prisoner's basic needs are provided for while incarcerated and the minimal
 10 filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect petitioner to pay that
 11 fee from the funds he apparently has available to him from his prison trust and/or other accounts. Indeed,
 12 plaintiff paid the \$5.00 court filing fee when he filed his petition and application to proceed *in forma*
 13 *pauperis*. Thus, petitioner's application is moot.

14 CONCLUSION

15 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, and
 16 because he in fact already has paid the court filing fee, the undersigned recommends that the court deny his
 17 application to proceed *in forma pauperis* as moot.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 19 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 20 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 21 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit
 22 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **August 12,**
 23 **2005**, as noted in the caption.

24 Dated this 15th day of July, 2005.

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Karen L. Strombom
 United States Magistrate Judge